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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,367	12/13/2001	Virgil A.G. Williams	IFF-27	2791

7590

01/27/2004

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/015,367

Applicant(s)

WILLIAMS ET AL.

Examiner

Blessing M. Fubara

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Specification Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 2) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 3) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 4) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Examiner acknowledges receipt of amendment and affidavit filed 10/24/03. Claims 21-36 are pending. Receipt is also acknowledged for the list of references provided that shows the correlation between air freshener and an algorithm as well as the use of an algorithm for the operation of air freshener.

#### ***Claim Rejections - 35 USC § 102***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 21-25, 28-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Pesu et al. (US 6,171,560).

Pesu discloses a gel composition comprising deionized water, potassium, bitrex solution, disodium EDTA, gellan gum, mica/titanium dioxide, octoxynol 13, alcohol, dipropylene glycol, fragrance oils, Kathon CGICP (column 3, lines 1-50 and column 4, lines 47-55). Octoxynol is surfactant, water is about 79%, fragrance is about 5% and the matrix is 7% in the example in column 3. Structure #40 is equivalent to an icon. The process of making the air freshener in Pesu goes through heating and cooling. The prior art does not have to recognize the mechanism by which a product functions. The issue is the novelty of the product. Pesu teaches the limitations of the claims.

3. Claims 21-24 and 26-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Semoff et al. (US 5,679,334).

Semoff discloses a transparent gel air freshener and a method of preparing the air freshener gel; the gel air freshener comprises aqueous gel, a fragrance, a surfactant and a

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cosolvent and botanicals are suspended in the gel for decoration (abstract). The suspended botanicals are equivalent to icons (see DeStefano et al. Us 6,214,063, column 3, lines 44-62 and DeStefano is cited for a teaching of botanical icons in a gel). The aqueous gel comprises gellan gum, potassium citrate, fragrance, bitrex, a combination of methylchlorisothiazolinone and methylisothiazolinone microbiocide, surfactant and water (column 3, line 27 to column 7 line 27). Semoff's method of preparing the gel air freshener comprises a chilling step; the chilling step ensures suspension of the botanicals (column 5, line 32 to column 6 line 24). The teaching of Semoff meets the limitations of the claims.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesu et al. (US 6,171,560).

Pesu discloses the air freshener of instant application. Regarding the time period recited in claim 20(i), one having ordinary skill in the art would know how to allow sufficient time for the icon to stay suspended in the body of the gel. Pesu's steps of preparing the air freshener differs from the recited steps. However, selection of any order of mixing the ingredients is prima facie obvious in the absence of new or unexpected results (In re Gibson, 39 F.2d 975, 5 USPQ 230 (CCPA 1930), In re Burhans, 154 F.2d 690, 69 USPQ 330 (CCPA 1946)).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the air freshener of Pesu. One having ordinary skill in the art would have

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been motivated to adjust the order of performing the steps with the expectation of preparing an air freshener where the icon 40 remains suspended in the gel base.

In response to applicants' assertion of a single body versus two-gel system, it is noted that the instant claims do not limit the body of the air-freshner to a single body. Secondly, the limitation of  $C \log_{10} P$  is inherent to the fragrance system since no specific fragrance and amounts are recited.

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is (571) 242-0594. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara  
Patent Examiner  
Tech. Center 1600

